

REMARKS

Claims 7-28, 30-34, and 43-49 are pending in this application, with claims 27-28, 30-34, and 43-49 being under consideration. In this Amendment, claims 27 and 33-34 have been amended, claims 1-6, 29, and 35-42 have been cancelled, and new claims 43-49 have been added. No new matter is presented herein.

Obviousness-Type Double Patenting Rejection

Claims 27-34 were provisionally rejected under the doctrine of non-statutory obviousness-type double patenting as allegedly being unpatentable over claims 1-28 of co-pending Application No. 11/271,666. Applicants respectfully request that this rejection be held in abeyance until there is an indication of allowable subject matter in one of the two applications.

Rejections under 35 U.S.C. § 102(b) and 103(a)

Claims 27-34 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,133,090 (Modak et al.)

Claims 27-34 were also rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Modak et al. in view of U.S. Published Appl. No. 2002/0152538 (McDevitt et al.).

Applicants respectfully traverse these rejections.

The Presently-Claimed Invention

The presently-claimed invention relates, generally, to a packaged antimicrobial elastomeric article coated with at least one antimicrobial agent, and a package comprising a desiccant for reducing the relative humidity in the vicinity of the elastomeric article to less than the ambient relative humidity. The antimicrobial activity of the elastomeric article is extended compared to an unpackaged elastomeric article. Further, the packaged elastomeric article is capable of being stored and/or transported for a period of time without significant loss of antimicrobial activity.

The claimed elastomeric articles beneficially minimize or reduce cross-contamination that can occur as a result of contact with more than one object. When the antimicrobial agent is applied to the surface in contact with the wearer's hand, the elastomeric articles also inhibit growth of skin flora. See paragraph [0034]. The package system including a water-vapor impermeable barrier and a desiccant reduces relative humidity and maintains said reduced relative humidity in the vicinity of the antimicrobial elastomeric article. See paragraph [0037]-[0038].

Rejection based on Modak et al.

Modak et al. is cited for disclosing a glove that is allegedly the same as the claimed elastomeric article, and the Office Action takes the position that the features relating to the claimed packaging process can be disregarded in determining the patentability of the claims. More specifically, the Office Action indicates that the patentability of product-by-process claims is based on the product itself, citing *In re Thorpe* in support of this position.

Modak et al. relates to an antiviral surgical or examination glove having an ***inner*** coating of an anti-infective agent that may include chlorhexidine, where the glove may be pretreated with an adsorption site saturating treatment including a quaternary ammonium compound such as didecyldimethylammonium chloride.

With respect to the position taken in the Office Action that the feature whereby the claimed glove is "packaged" can be disregarded for purposes of assessing patentability, Applicants respectfully disagree. As set forth in MPEP section 2113, the structure implied by the claimed process steps should be considered when assessing the patentability of product-by-process claims, especially where, as here, the process steps impart distinctive structural characteristics to the final product. See, e.g., *In re Garnero*, 412 F.2d 276, 279, 162 USPQ 221, 223 (CCPA 1979) (holding "interbonded by interfusion" to limit structure of the claimed composite and noting that terms such as "welded," "intermixed," "ground in place," "press fitted," and "etched" are capable of construction as structural limitations). Nevertheless, in order to advance prosecution of

this application, the present claims have been amended so that the former product-by-process steps relating to forming and packaging the claimed elastomeric articles are now set forth as structural features.

The features of claims 27-28, 30-34, and 43-49 regarding the packaging used to store the claimed elastomeric articles must be taken into account when assessing their patentability, and are not disclosed or suggested in Modak et al. Accordingly, Applicants submit that Modak et al. cannot anticipate claims 27-28, 30-34, and 43-49. Applicants therefore respectfully request withdrawal of this rejection.

Rejection based on Modak et al. McDevitt et al.

The deficiencies of Modak et al. with respect to the presently-claimed invention are discussed above. McDevitt et al. is cited for allegedly disclosing an elastomeric finger glove that is contained in a package to preserve the additives that are applied to the finger glove, and maintain its sterility. However, McDevitt et al. does not remedy the deficiencies of Modak et al. with respect to the presently-claimed invention.

McDevitt et al. relates to a finger glove formed from a nonwoven web material that is liquid impermeable, but vapor permeable. The finger glove may also include an elastic nonwoven material to provide form-fitting properties. The finger glove of McDevitt et al. is intended for use as an applicator or personal cleaning product, such as a swab or oral hygiene device. Accordingly, the finger glove of McDevitt et al. may also contain any of a number of additives (see paragraphs [0175]-[0181]), and may be packaged in order to preserve the various additives and avoid contamination prior to use (see paragraph [0189]).

The Office Action takes the position that it would have been obvious to modify the elastomeric glove of Modak et al. by including the packaging of McDevitt et al., in order to extend the antimicrobial activity of an elastomeric article by using a moisture-resistant barrier container, and that one skilled in the art would have been motivated to do so because it would preserve additives provided on the elastomeric article.

However, the combination of Modak et al. and McDevitt et al. does not disclose or suggest the features of independent claims 27 and 43 in which the articles are provided in a package comprising a desiccant or a water-vapor free atmosphere for reducing relative humidity in the vicinity of the elastomeric article, in order to extend the antimicrobial activity of the elastomeric article.

The combination of Modak et al. and McDevitt et al. fails to disclose or suggest all of the features of the claims, and nothing in their disclosures would lead one skilled in the art to modify them to arrive at the presently-claimed invention without the benefit of hindsight reconstruction based on Applicants' disclosure. Applicants therefore submit that claims 27-28, 30-34, and 43-49 are not unpatentable over the combination of Modak et al. and McDevitt et al., and respectfully request withdrawal of this rejection.

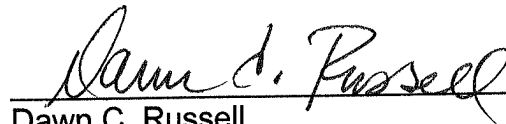
CONCLUSION

In view of the foregoing, reconsideration of the application, withdrawal of the outstanding rejections, allowance of claims 27-28, 30-34, and 43-49, and the prompt issuance of a Notice of Allowance are respectfully requested.

Should the Examiner believe that anything further is necessary in order to place this application in better condition for allowance, the Examiner is requested to contact the undersigned at the telephone number listed below.

In the event that additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefore are hereby authorized to be charged to our Deposit Account No. 01-2300 referencing docket number **029714.00017**.

Respectfully submitted,



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